

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JIMMY GASTON BARBERAN,

Plaintiff,

07 Cv. 3337 (CLB)

- against-

PEOPLE'S BANK,

Defendant.

***Memorandum and Order***

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Brieant, J.

Before the Court for consideration is the Report and Recommendation of the Hon. Mark D. Fox, United States Magistrate Judge, filed January 24, 2008, and Objections thereto by Mr. Barberan filed February 11, 2008.

The Magistrate Judge concluded that the Amended Complaint should be dismissed for failure to plead fraud with adequate particularity. This Court agrees, and the Report and Recommendation is adopted as the decision of the district court for the reasons therein stated. In the context of this case and on these bare allegations, it is impermissible to recast as a civil RICO claim what appears to be at most an account payable dispute arising out of a credit card.

This Court agrees with the learned Magistrate Judge that the allegations of *ultra vires* activity add nothing to the Complaint.

The Motion (Doc. 7) is granted. The Clerk of the Court shall file a final judgment dismissing the action with prejudice.

Copies mailed / handed / faxed to counsel 3/19/08

SO ORDERED.

Dated: White Plains, New York  
February 19, 2008

Charles L. Brieant  
Charles L. Brieant, U.S.D.J.